

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5972 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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VIJAYSINH SURESHSINH PANDIT

Versus

STATE OF GUJARATS

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Appearance:

THROUGH JAIL for Petitioner

RULE SERVED for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 03/11/1999

ORAL JUDGEMENT

#. Detenue Vijaysinh Sureshsinh Pandit has moved present petition through jail and had prayed for legal aid. However, as the matter has not been assigned uptil now, Ms.D.R.Kachchava is appointed as amicus curiae.

#. Detention order dtd.25.1.99 passed by the respondent no.2-Police Commissioner, Ahmedabad in exercise of power

conferred under Sec.3 (1) of the Gujarat Prevention of Anti Social Activities Act 1985, ( "PASA" for short ) is challenged in the present petition under Article 226 of Constitution of India.

#. The grounds of detention placed on record interalia indicate that a prohibition case bearing C.R. No.81/99 was registered against the petitioner at Nashabandhi Police Station, East Division on 24.1.99 and country made liquor was seized from the possession of the petitioner. The grounds further indicate that over and above the said case, three witnesses have supplied information in respect to bootlegging activity of the petitioner on assurance of their anonymity. The incidents are dated 27.12.98, 2.1.99 and 5.1.99 respectively. On the basis of said material, respondent no.2 has come to conclusion that the petitioner is a "bootlegger" within the meaning of Sec.2 (b ) of PASA. That enforcement of general provision of law being insufficient to prevent the petitioner from continuing his anti social activity which prejudicially affect the maintenance of public order, detention order is necessary and hence impugned order is passed.

#. Ms.D.R.Kachchava as amicus curiae has contended on behalf of the petitioner that the impugned order suffers from various infirmities like non application of mind etc. It is pointed out that on the date of passing of the impugned order the petitioner was in judicial custody in respect to prohibition case filed against him. However, the detaining authority has failed to consider the less drastic remedy like opposing or cancellation of bail available under Sec.437 (5) of Cr.P.C. which disclose non application of mind vitiating the subjective satisfaction and rendering the impugned order invalid.

#. In the matter of Zubedabibi Rasidkhan Pathan Vs. State of Gujarat & Ors reported vide 1995 (2) G.L.R. P.1134 Division Bench of this court has expressed a view that non consideration of less drastic remedy like cancellation of bail under Sec.437 (5) of Cr.P.C. amounts to non application of mind vitiating the detention order. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal No.1056/99 decided on 15.9.99 by this court ( Coram : C.K.Thakkar. & A.L.Dave. JJ ).

#. In the instant case, perusal of ground of detention disclose the fact that the detaining authority has observed that petitioner is in judicial custody but he is likely to be released on bail and after getting released

he is likely to continue his anti social activity. The said observation suggests that the detaining authority has passed the impugned order on apprehension rather than material placed before him without considering the aspect of less drastic remedy like cancellation of bail or opposing bail. Under the circumstances, I am constrained to hold that subjective satisfaction reached by the detaining authority having been vitiated on account of non application of mind, impugned order is bad in law.

#. As the petition succeeds on the above stated ground alone, it is not necessary to consider the other contention raised.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dtd.25.1.99 passed by the respondent no.2 against the petitioner is hereby quashed and set-aside. The petitioner Vijaysinh Sureshsinh Pandit is ordered to be set at liberty forthwith, if not required in any other case.

#. Rule to that extent made absolute.

kks